

ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of )  
 Amendment of § 73.202(b) Table of ) MM Docket No. 92-244  
 FM Broadcast Stations, )  
 (Charlotte Amalie, Virgin Islands) ) RM-8027

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REPLY COMMENTS

El Mundo Broadcasting Corporation, licensee of WJEC-FM, Charlotte Amalie, P.R. ("WKAQ"); Estereotempo, Inc., licensee of WIOC-FM, Ponce, P.R. ("WIOC"); Radio Redentor, Inc., licensee of WERR-FM, Utado, P.R. ("WERR"); and Aurio Matos, licensee of WNNV-FM, Aguada, P.R. ("WNNV") collectively as Joint Commenters, respectfully submit their Reply Comments and state as follows:

1. In a Notice of Proposed Rule Making, DA 92-1370, released on November 10, 1992, the Commission sought comment on the proposal of Calypso Communications, permittee of WVNFX-FM, Charlotte Amalie, V.I. ("WVNFX") to substitute Channel 267B at Charlotte Amalie, V.I. for Channel 246B and modify its permit accordingly. The Joint Commenters counterproposed substituting Channel 298B for Channel 246B and specifying WVNFX to operate at Channel 298B. Combined with the revised Table of Allotments and other proposed facility changes, the Joint Commenters counterproposal would:

- provide first local service to the city of Gurabo, P.R.;
- allow WNNV to upgrade from a Class A to a Class B1 facility and improve the first local service that it provides to the city of Aguada, P.R.; and
- encompass 2 million more people within the 1.0 mV/m contours of the four Joint Commenters' stations.

2. In addition to the Joint Commenters pleading, comments

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opposing WVNIX's proposal were filed by Virgin Islands Stereo Communications, licensee of WVIS, Frederiksted, Virgin Islands ("WVIS") and Paradise Broadcasting Corporation, permittee of WDCM-FM, Cruz Bay, Virgin Islands, ("WDCM"), filed comments and a counterproposal. Each of these commenters suggests alternative uses of Channel 267B, which conflict with the counterproposal of the Joint Commenters. A review of these comments will reveal that adopting the Joint Commenters proposal will result in the most preferential arrangement of allotments.

WVIS's Comments are not relevant to the rule making proceeding

3. WVIS advances three arguments in opposition to the proposal advanced by WVNIX. None of the arguments can be addressed in a rule making context. First, WVIS claims that WVNIX cannot provide its city of license with a 70 dBu signal from its presently authorized site. <sup>1/</sup> Whether this is true or not, all the Joint Commenters propose is an alternative channel. The burden of proof of city grade coverage falls on the petitioner. If the FCC finds city grade coverage would be provided by the WVNIX proposal, then the petitioner can move to the alternative channel proposed by the Joint Commenters. If the Commission finds that the WVNIX proposal will not provide city grade coverage to Charlotte Amalie, then its request should be denied. <sup>2/</sup> Since the Joint Commenters are

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<sup>1/</sup> WVNIX proposed using its presently authorized construction permit site for the new channel, as did the Joint Commenters.

<sup>2/</sup> If the WVNIX request is denied, then WIYC, Charlotte Amalie can move to Channel 267B as the Joint Commenters proposed, which would allow WDCM, Cruz Bay to move to Channel 298B and provide first local service to that community. (See ¶ 7-8, infra.)

providing an equivalent channel, proving or disproving the WVIS allegation as not the responsibility of the Joint Commenters.

4. WVIS argues that the Commission erred in allotting Channel 246B to Charlotte Amalie in the first place because the Virgin Islands are already adequately served and the economic base there cannot support another radio station. <sup>3/</sup> Obviously, the present permittee of WVNK believes it can succeed in operating a successful facility and has taken the proper steps to acquire the authorization from the FCC.

5. At the same time WVIS is arguing that the economy of the Virgin Islands cannot support another station and that its operation is "barely able to meet its basic operating expenses", WVIS requests that the Commission allocate Channel 267B to Charlotte Amalie, V.I. and open a filing window to allow it an opportunity to file an application for that channel. The comments of WVIS are contradictory and inconsistent. As a result, its comments warrant no further consideration.

6. In any event, the Joint Commenters counterproposal is comparatively superior to the WVIS proposal. The Commission's well established allotment priorities are, in order of importance:

1. First full-time aural service;
2. Second full-time aural service;
3. First local service;

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<sup>3/</sup> Specifically WVIS states that "because of the limited economic base in the islands, as compared with the large number of stations which operate there, WVIS is barely able to meet its operating expenses." Comments at p. 3-4.

#### 4. Other public interest matters.

Revision of FM Assignment Policies and Procedures, 90 F.C.C. 2d 88, 91 (1982). The WVIS proposal will provide seventh local service to Charlotte Amalie, which advances only the least important allotment priority. The Joint Commenters counterproposal will provide first local service to a significant community, Gurabo, P.R. which advances a priority of far greater importance. In addition, the Joint Commenters counterproposal will produce the ancillary benefits of a channel upgrade for the facility that provides the only local service to Aguada, P.R. and new 1.0 mV/m service to over 2 million people. These "other public interest" benefits are far superior to the "benefit" of a sixth local service to Charlotte Amalie, V.I.

#### The WDCM Counterproposal

7. WDCM proposes that Channel 267B be substituted for its presently authorized Channel 222B allotment at Cruz Bay, V.I. In support of its request, WDCM that at its present site and with its presently allocated frequency, its operation "...would create harmful electrical interference with allotments in the British Virgin Islands." If WDCM is not allowed to move to a different channel, then Cruz Bay, V.I. would be deprived of its first local service. <sup>4/</sup> WDCM claims that its proposed channel change is the

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<sup>4/</sup> WDCM surmises that the Commission is aware of the fact that the Channel 222B allotment to Cruz Bay is unworkable because the FCC data base has proposed to delete that allotment and substitute it with Channel 224B. However, WDCM argues that operation on Channel 224B at Cruz Bay is precluded by British Virgin Islands interference as well. However, the engineering showing is inadequate to support its contentions.

equivalent of providing first local service to Cruz Bay, V.I., advancing one of the Commission's three most important allotment priorities. WVNIX's proposal would provide Charlotte Amalie, V.I. with a sixth local service, which WDCM argues only advances the Commission's allotment priority of least significance. Thus, WDCM concludes, its counterproposal should be adopted and Channel 267B should be allotted to Cruz Bay, V.I. instead of Charlotte Amalie, V.I.

8. Channel 267B is the same channel that WVNIX originally proposed to substitute for its presently authorized Channel 246B. The Joint Commenters proposed Channel 298B instead of Channel 267B for WVNIX. Channel 298B will also work at Cruz Bay, V.I.

The Joint Commenters proposal is the superior proposal

9. WVIS claims that it needs Channel 267B to provide seventh local service to Charlotte Amalie.<sup>5/</sup> WDCM argues that it needs Channel 267B as an alternate channel to allow other changes to take place, which in turn will provide first local service to Cruz Bay, V.I., which it admits is only a Census Designated Place, and had a 1980 census population of less than 2,000 people. The Joint Commenters argue that they need Channel 267B as an alternate channel to allow other changes to take place, which in turn will provide first local service to a city with a 1990 census population of 9,199 and enhanced service to Aguada. Neither the WDCM nor the

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<sup>5/</sup> WVNIX proposes substituting Channel 267B for its present authority to provide sixth service to Charlotte Amalie, but that can be accomplished by allotting substituting Channel 298B (instead of 267B) for WVNIX's present allotment.

WVIS proposal can boast creating such a preferential allotment scheme, and in addition, the Joint Commenters proposal would allow either WDCM or WVNIX to operate on Channel 298B (rather than 267B) and thus avoid any British Virgin Islands interference.

10. Of the three proposed uses for Channel 267B in this docket, the Joint Commenters counterproposal of substituting Channel 267B for Channel 282B at Charlotte Amalie, V.I. and modifying WIYC's license accordingly, would result in the most preferential arrangement of allotments. Gurabo, P.R. would receive first service, Aguada would receive improved service from its only local service and 2 million more people would receive 1.0 mV/m coverage. Neither the WDCM nor the WVNIX proposal offers a better result. The Joint Commenters have also provided a channel (Channel 298B) which can be used by either WDCM or WVNIX, whichever the Commission decides is the better proposal.

Request for severance and proposed Further NPRM

11. The Joint Commenters, in analyzing the various competing requests, came up with a solution that would resolve matters by affording WVNIX and WDCM workable channels, and has informed the attorneys for WDCM and WVNIX. It is not proper procedure for the Joint Commenters to suggest any further channel substitutions in reply comments, but the solution that was discovered would involved moving an existing facility in Christiansted, V.I. and allocating a different channel for a vacant allotment in Frederiksted, V.I. The Joint Commenters do not officially propose this, but merely offer it for informational purposes to the Commission and other

parties in interest.

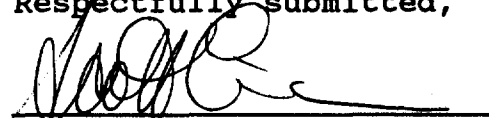
12. Based on the foregoing, the Joint Commenters request that the aspect of this docket involving WVNK and WDCM be severed so that further evaluation of their competing proposals can be made, and solutions that would allow both facilities to have full B channels clear of British Virgin Island interference and in compliance with domestic spacing rules can be fully explored. By issuing a Further Notice of Proposed Rule Making dealing specifically with the proposals of WDCM and WVNK, the relative merit of their cases can be weighed and solutions can be proposed (such as the solution the Joint Commenters have made them aware of). The Joint Commenters also request that the Comments filed by WVIS be dismissed. <sup>6/</sup> In the meantime, the Joint Commenters proposal can be implemented, and the improved service it will provide can be achieved more expeditiously.

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January 19, 1993

Respectfully submitted,

  
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<sup>6/</sup> The request of WVIS to allocate Channel 267B to Charlotte Amalie, V.I. as that community's seventh local service is comparatively inferior to the Joint Commenters request and therefore should not be considered.

**CERTIFICATE OF SERVICE**

I, Scott Cinnamon, do hereby certify that true copies of the foregoing were delivered this 19th day of January, 1993, as shown, or mailed, first-class, postage prepaid, to the following:

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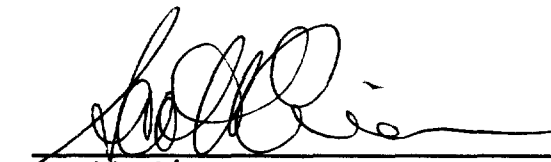
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